

Message Text

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CINCPAC

C O N V V A L D E N T I A L SENTION 1 OF 2 DACCA 0666

LIMDIS

CINCPAC FOR POLAD

E.O. 11652: GDS

TAGS: PGOV, PINT, BG

SUBJECT: SHEIKH MUJIB: THE NEW MUGHAL

REF: DACCA 0457 (NOTAL)

SUMMARY: THE FOURTH CONSTITUTIONAL AMENDMENT, THE DETAILS OF WHICH WERE DESCRIBED IN THE REFERENCED TELEGRAM, EFFECTIVELY GIVES MUJIBUR RAHMAN UNLIMITED POWERS TO CONTROL BANGLADESH. THE PARLIAMENT, THE JUDICIARY, THE POLITICIANS AND PUBLIC HAVE BEEN LEFT WITH NO REALISTIC CONSTITUTIONAL AVENUES TO CHALLENGE, LET ALONE REVERSE, ANY ACTION THAT MUJIB MAY WISH TO TAKE. THE IMPORTANT QUESTION NOW IS THE EXTENT TO WHICH MUJIB WILL USE THESE NEW POWERS AND THE DEGREE OF PARTICIPATION AND CRITICISM HE IS WILLING TO ALLOW TO OTHERS. INITIAL REACTION TO MUJIB'S PRESIDENCY APPEARS TO BE INDIFFERENCE AMONG THE MASSES, THE SYCOPHANTIC ENTHUSIASM OF PARTY WORKERS AND SOME FORMER CRITICS, AND THE NEAR SILENT DISMAY OF ADVOCATES OF PARLIAMENTARY DEMOCRACY AND THE RULE

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OF LAW. WHILE THE NEW CHANGE, AND THE UNDERLYING TREND TOWARD

AUTHORITARIANISM WHICH IT REFLECTS, HAVE POTENTIALLY DISTURBING IMPLICATIONS FOR OUR OWN POLICY, THESE ARE STILL DOWN THE ROAD AND A "WAIT-AND"SEE" ATTITUDE SEEMS INDICATED FOR THE PRESENT. END SUMMARY.

1. MUJIB'S MONOPOLY OF POWER. ON JANUARY 25, THE JATIYO SANGSAD, IN EFFECT, CREATED A NEW CONSTITUTION GIVING MUJIBUR RAHMAN, NOW PRESIDENT, UNLIMITED POWERS TO CONTROL THE STATE AND THE POLITICAL LIFE OF BANGLADESH FOR THE NEXT FIVE YEARS, AT A MINIMUM. AS RESTRUCTURED, THE CONSTITUTION PLACES NO PRACTICAL CHECKS OR SAFEGUARDS UPON HIS ACTIONS. THEORETICALLY, THE ONLY WAY IN WHICH MUJIB COULD BE RESTRAINED WOULD BE THROUGH THE IMPEACHMENT PROCESS. THE POSSIBILITY IS VERY REMOTE THAT TWO-THIRDS OF THE RULING PARTY IN PARLIAMENT--BE IT THE AWAMI LEAGUE OR A NEW NATIONAL PARTY-- COULD UNITE TO SUBMIT A MOTION OF IMPEACHMENT TO THE SPEAKER, WHO WOULD THEN BE REQUIRED TO SUMMON PARLIAMENT. HOWEVER, EVEN WERE THIS TO HAPPEN, THERE IS NOTHING IN THE CONSTITUTION TO PREVENT MUJIB, FOR INSTANCE, FROM PROROGUING PARLIAMENT AS SOON AS ITS IMPEACHMENT SESSION CONVENED, THUS CUTTING OFF ANY ACTION. MEMBERS OF A PARLIAMENT CONTROLLED BY MUJIB'S PARTY HAVE NO WAY TO OPPOSE HIM ON ANY BILL: OPPOSITION, ABSTENTION, OR ABSENCE WITHOUT PARTY PERMISSION MEANS THAT THEY MUST RESIGN. MOREOVER, MUJIB RETAINS ORDINANCE-MAKING POWERS WHEN PARLIAMENT IS NOT IN SESSION AND ABSOLUTE VETO POWER OVER ANY BILLS SENT UP BY THE JATIYO SANGSAD. PARLIAMENT AS A FORUM OF DISCUSSION HAS ALSO BEEN CURBED; IT NO LONGER NEED MEET EVERY FOUR MONTHS, BUT ONLY TWICE A YEAR. MUJIB, WHO PROROGUED THE CURRENT SESSION JANUARY 25, DOES NOT HAVE TO CALL THE JATIYO SANGSAD BACK IN SESSION BEFORE THE END OF THE YEAR TO MEET THE NEW CONSTITUTIONAL REQUIREMENT.

2. RIGHTS HOLLOW, COURTS EMASCULATED. IF THE LEGISLATURE HAS ONLY THEORETICAL POWER TO CHALLENGE THE PRESIDENT, THE COURTS HAVE LESS. THE RIGHT OF APPEAL TO THE COURTS AND THE INTEGRITY OF THE COURTS HAS BEEN SEVERELY IMPAIRED IF NOT DESTROYED. WHAT WAS, IN THE INITIAL CONSTITUTION, AN INNOCUOUS IMMUNITY FROM ANY COURT JURISDICTION OVER THE OFFICIAL ACTS OF A FIGUREHEAD PRESIDENT BECOMES A REAL PROHIBITION ON REDRESS OF GRIEVANCES FOR THE ACTIONS OF A NEARLY ABSOLUTE RULER. IN ADDITION, THE INDEPENDENCE OF THE JUDICIARY AND ITS JURISDICTION OVER THE PROTECTION OF FUNDAMENTAL RIGHTS HAVE BEEN REMOVED. THE PRESIDENT NOW HAS THE POWER TO CONFIDENTIAL

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APPOINT, ASSIGN, REMOVE, AND DETERMINE THE QUALIFICATIONS AND PERQUISITES FOR ALL JUDGES AND MEMBERS OF THE JUDICIARY SERVICE WITHOUT EITHER CONSULTATION WITH OR THE APPROVAL FROM THE SUPREME COURT OR THE PARLIAMENT, AS PREVIOUSLY REQUIRED. THE ADDED DISCLAIMER THAT THE JUDICIARY SHALL BE INDEPENDENT HAS LITTLE FORCE UNDER THE CIRCUMSTANCES. THE HIGH COURT RETAINS NOMINAL SUPERVISION OF LOWER COURTS BUT NOT OF TRIBUNALS WHICH HAVE BEEN EMPLOYED FREQUENTLY BY THE REGIME UNDER PAST PRESIDENT'S ORDERS,

THE SPECIAL POWERS ACT, AND THE EMERGENCY RULE STILL IN EFFECT. UNDER THE ORIGINAL CONSTITUTION, FUNDAMENTAL RIGHTS, ALTHOUGH HEDGED IN THE INTERESTS OF THE STATE AND SOCIALISM, WERE PROTECTED BY THE RIGHT OF PETITION TO THE SUPREME COURT. THE COURT NO LONGER HAS THAT JURISDICTION; INSTEAD THE PARLIAMENT--NOW COMPLETELY THE CREATURE OF THE PRESIDENT--IS EMPOWERED TO ESTABLISH A CONSTITUTIONAL COURT, TRIBUNAL OR COMMISSION TO ENFORCE FUNDAMENTAL RIGHTS. THE EXTENSIVE LIST OF FUNDAMENTAL RIGHTS REMAINS IN THE CONSTITUTION; LOST IS THE ABILITY TO ENFORCE THEM.

3. PARTY, GOVERNMENT SEPARATION BLURS. THE POWER GRANTED TO MUJIB TO ABOLISH ALL POLITICAL PARTIES AND ESTABLISH ONE NATIONAL PARTY LAYS THE GROUND FOR THE TOTAL POLITICIZING OF GOVERNMENT THROUGHOUT THE COUNTRY. THAT MUJIB INTENDS TO MOVE IN THIS DIRECTION IS FURTHER INDICATED BY OTHER CHANGES IN THE CONSTITUTION: ELIMINATION OF ALL REFERENCES TO LOCAL GOVERNMENT STRUCTURE; ELIMINATION OF THE GUARANTEE OF "EFFECTIVE PARTICIPATION BY THE PEOPLE THROUGH THEIR ELECTED REPRESENTATIVES IN ADMINISTRATION AT ALL LEVELS" FROM THE DEFINITION OF THE REPUBLIC (WHICH IS STILL DESCRIBED AS A DEMOCRACY); AND THE NEW RIGHT GRANTED TO CIVIL SERVANTS AND MILITARY OFFICERS TO JOIN THE NATIONAL PARTY (REVERSING THE LONG SUBCONTINENTAL PROHIBITION ON POLITICAL PARTY AFFILIATION FOR GOVERNMENT PERSONNEL). MUJIB HAS COMPLETE FREEDOM TO STRUCTURE A ONE-PARTY STATE, HAVING TOTAL CONTROL OVER THE MEMBERSHIP, ORGANIZATION, DISCIPLINE, FINANCE AND FUNCTION OF SUCH A PARTY. THE FUNDAMENTAL RIGHTS OF ASSEMBLY AND ASSOCIATION ARE SUPERSEDED; NO PERSON WILL HAVE THE RIGHT TO FORM, JOIN OR TAKE PART IN THE ACTIVITIES OF ANY OTHER POLITICAL PARTY.

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4. FORM NEW BUT SUBSTANCE OLD. BECAUSE OF HIS OVERWHELMING CONTROL OF THE AWAMI LEAGUE AND THE WEAKNESS OF THE OPPOSITION, MUJIB HAS ENJOYED MANY OF THE POWERS NOW INSTITUTIONALIZED IN THE CONSTITUTION. WHAT THE NEW SYSTEM MAY ELIMINATE FORMALLY, HOWEVER, IS THE BENEFIT OF THE SELF-CORRECTIVE PROCESS, THE POSSIBILITY OF CHANGE IN EITHER THE COMPOSITION OR POLICIES OF THE GOVERNMENT THROUGH AN EVOLUTIONARY POLITICAL PROCESS. WE HAVE NO EVIDENCE THAT MUJIB INTENDS TO STIFLE POLITICAL DISCUSSION TOTALLY, BUT NEITHER ARE THERE SIGNS THAT HE WOULD ALLOW ANY MORE SIGNIFICANT INFLUENCE TO THE INNER COUNCILS OF A NATIONAL PARTY THAN HE HAS TO THE AWAMI LEAGUE. HIS DESIRE FOR A ONE-PARTY STATE WOULD SUGGEST THAT HE FINDS EVEN THE FEEBLE CRITICISM VOICED SO FAR IN BANGLADESH INTOLERABLE, AND HIS DECISION TO CREATE A NEW PARTY SUGGESTS THAT HE CONSIDERS THE PRESENT AWAMI LEAGUE TOO ILL DISCIPLINED AND POTENTIALLY TOO TROUBLESOME FOR HIM. IT IS POSSIBLE THAT HE WILL SO STRUCTURE THE MEMBERSHIP AND OTHER ASPECTS OF THE NATIONAL PARTY TO CREATE A DISCIPLINE THAT WOULD MAKE EVEN THE REMOTE PROBABILITY OF A CONSTITUTIONAL CHALLENGE SUCH AS AN IMPEACHMENT EFFORT A TOTAL IMPOSSIBILITY.

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5. WHAT DOES MUJIB DO FOR AN ENCORE? THE PROBLEMS OF BANGLADESH ARE ECONOMIC AND ADMINISTRATIVE; MUJIB HAS CHOSEN A POLITICAL METHOD TO RESOLVE THEM. HOW A MORE AUTHORITARIAN SYSTEM WILL ACCOMPLISH HIS STATED AIMS MUST AWAIT MUJIB'S IMPLEMENTATION OF HIS EXTENSIVE POWERS. IF THERE IS NO IMPROVEMENT IN THE COMMONWEAL, HOWEVER, MUJIB, HAVING LEGALLY TAKEN ALL POWER INTO HIS OWN HANDS, WILL HAVE FEW EXCUSES LEFT FOR THE FAILURES OF HIS GOVERNMENT AND FEW OTHER OPTIONS TO PURSUE. DESPITE, OR RATHER BECAUSE OF, THE PANOPLY OF HIS NEW OFFICE, MUJIB MORE THAN EVER WILL BE JUDGED BY PERFORMANCE. SHOULD HE FAIL TO PRODUCE, AFTER HAVING CLOSED ALL LEGITIMATE CHANNELS OF DISSENT, THERE WILL BE NO OUTLET FOR BENGALIEE FRUSTRATION OVER THE SEEMINGLY INEXORABLE SOCIAL AND ECONOMIC DETERIORATION OF THE COUNTRY. THE ONLY CHOICE LEFT TO THE DISAFFECTED WOULD BE A RESORT TO FORCE TO BRING DOWN MUJIB AND HIS GOVERNMENT.

6. BENGALIEES WATCH, WAIT, WORRY. THE PUBLIC REACTION TO MUJIB'S ASSUMPTION OF THE PRESIDENCY IS NECESSARILY CAUTIOUS, GIVEN THE CONTINUING RESTRICTIONS OF EMERGENCY RULE, BUT APPARENTLY IT IS ONE OF INDIFFERENCE AMONG THE MASSES, FULSOME PRAISE AMONG PARTY

WORKERS AND SURPRISINGLY A FEW OF THE GOVERNMENT'S SEVEREST LEFTIST CRITICS, AND NEAR-SILENT DISMAY AMONG ADVOCATES OF PARLIAMENTARY DEMOCRACY AND THE RULE OF LAW, BOTH WITHIN AND WITHOUT THE AWAMI LEAGUE. WHILE MANY BENGULEES ARE NOT IMPRESSED WITH THE REASONS GIVEN FOR THE CHANGE, BELIEVING THAT MUJIB ALREADY HAD SUFFICIENT POWERS AND VERY LITTLE REAL IMPEDIMENTS TO ACTION, OTHERS HAVE EXPRESSED LIMITED OPTIMISM THAT CONDITIONS IN THE COUNTRY MIGHT IMPROVE AS A RESULT OF THE CHANGE. THE CIVIL LIBERTIES ISSUE ASIDE, THERE IS A SUSPENSION OF JUDGMENT UNTIL MUJIB'S INTENTIONS BECOME CLEAR: BENGALEES WANT TO BE SHOWN, NOT TOLD, THAT THE NEW SYSTEM WILL CURE THE ILLS OF THE COUNTRY. SKEPTICISM, IF NOT CYNICISM, HOWEVER, GREETED THE ANNOUNCEMENT OF THE NEW COUNCIL OF MINISTERS: THE SAME PARTY LOYALISTS WHO HAVE BEEN RUNNING THE GOVERNMENT FOR THREE YEARS. AMONG SOME THOUGHTFUL OBSERVERS IN DACCA, THERE IS SERIOUS CONCERN ABOUT THE EXTENT OF POWERS MUJIB HAS ASSUMED, HIS ABILITY TO REMOVE ALL OPTIONS FOR POLITICAL DISSENT, AND, MOST OMINOUSLY TO THEM, HIS DESTRUCTION OF AN INDEPENDENT JUDICIARY, SOMETHING THE CRITICS CLAIM WAS NEVER DONE IN THE PAKISTAN ERA, DESPITE THE PERIODIC SUPPRESSION THEN OF POLITICAL ACTIVITY AND THE INTIMIDATION OF SOME JUDGES.

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7. ONE THING IS CERTAIN. MUJIB NOW HAS DESPOTIC POWERS. PERHAPS HE WILL USE THEM BENEVOLENTLY. HOWEVER, BY MAKING CONSTITUTIONAL OPPOSITION IMPOSSIBLE, HE RISKS FORCING EVEN HIS RESPONSIBLE CRITICS AND THOSE WHOSE SUPPORT THEY CAN MARSHAL INTO EXTRA-CONSTITUTIONAL CHANNELS. HOWEVER BENIGN HIS INTENTIONS MAY BE, IN TIME HE MAY FIND THAT RETENTION OF POWER (WITH WHICH TO DO GOOD) WILL COME TO RELY INCREASINGLY ON REPRESSION. AND AFTER ALL, BENGALEES HAVE LONG SHOWN A TASTE FOR CLANDESTINE OPPOSITION, WELL LACED WITH TERROR.

8. IMPLICATIONS FOR US POLICY. THE IMPLICATIONS WHICH THIS CHANGE IN BANGLADESH'S GOVERNMENTAL SYSTEM WILL HAVE FOR THE UNITED STATES, AND PRESUMABLY FOR OTHER WESTERN AID DONORS, WILL DEPEND IMPORTANTLY ON THE DEGREE OF REPRESSION TO WHICH MUJIB RESORTS IN ADMINISTERING HIS NEW SYSTEM. WHILE BANGLADESH'S DEMOCRATIC FRIENDS WILL REGRET THE PASSING OF PARLIAMENTARY DEMOCRACY FROM THE SCENE HERE AND WILL BE HARD TO CONVINCE THAT THE STEP IS NECESSARY, THEY WILL BE READY TO FORGIVE MUJIB IF HE USES HIS NEW POWERS TO MAKE AT LAST THE POLICY DECISIONS LONG NEEDED TO REVITALIZE THE BANGLADESH ECONOMY AND IMPROVE THE LOT OF THE BENGALEE PEOPLE WHILE STILL PRESERVING AN ATMOSPHERE OF RELATIVE FREEDOM OF EXPRESSION. WERE EVENTS TO PROCEED ALONG THESE LINES, THE RESULT MIGHT WELL CONTRIBUTE TO A GREATER STABILITY IN BANGLADESH THAN NOW OBTAINS, A GOAL IN WHICH WE STRONGLY SHARE.

9. BUT, WITH THE VIRTUAL ELIMINATION OF THE ESCAPE VALVES NORMALLY AVAILABLE IN A DEMOCRATIC SOCIETY, THERE IS NOW THE DANGER THAT

MUJIB, WHOSE AUTHORITARIAN BENT NOW SEEMS MANIFEST, WILL FIND HIMSELF INCREASINGLY DRIVEN TO REPRESSIVE MEASURES TO PRESERVE HIS RULE. HIS STATED GOAL IN CHANGING THE SYSTEM IS TO REALIZE THE DEVELOPMENT OF AN INDEPENDENT SOCIALIST STATE, SELF-SUFFICIENT IN FOOD AND ABLE TO STAND ON ITS OWN WITHOUT MASSIVE ASSISTANCE FROM ABROAD. HOWEVER, MUJIB'S PAST RECORD AND INITIAL ACT AS PRESIDENT--THE APPOINTMENT OF HIS AWAMI LEAGUE CABINET AS THE COUNCIL OF MINISTERS--DOES NOT REASSURE US THAT HIS "SECOND REVOLUTION" IN FACT REPRESENTS A NEW RESOLVE TO CONFRONT THE REAL PROBLEMS OF BANGLADESH BUT RATHER SUGGESTS THAT HIS CHIEF PURPOSE HAS BEEN TO SAFEGUARD HIS OWN POWER.

10. WE BELIEVE NEVERTHELESS THAT, SO FAR AS OUR OWN ATTITUDE IS CONCERNED, WE SHOULD GIVE MUJIB THE BENEFIT OF THE DOUBT FOR THE CONFIDENTIAL

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TIME BEING AND--WHILE GREATER CAUTION AND CIRCUMSPECTION ARE IN ORDER--WE DO NOT SEE THAT ANY CHANGE IN OUR BASIC APPROACH IS YET REQUIRED.
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